

REMARKS

I. THE RESTRICTION REQUIREMENT

Applicants acknowledge that claim 9 has been rejoined to Group I and that the restriction requirement has been made final. Applicants reserve the right to file divisional applications on the non-elected claims.

II. THE OATH/DECLARATION

The Office Action asserts that the Oath/Declaration is defective. In particular, the Office Action asserts that the Oath/Declaration is not signed by Nelissen and Luyten. In response, Applicants submit that three copies of the Oath/Declaration were filed with the application: one copy included the signature of De Backer; a second copy included the signatures of Nelissen and Luyten; and a third copy included the signatures of Viane and Logghe. Attached are copies of the post card and the Oath/Declaration as originally filed on February 14, 2001.

III. THE SPECIFICATION

THE ABSTRACT

The Office Action objects to the Abstract for exceeding 150 words. In response, Applicants amend the Abstract to comply with MPEP § 608.01(b).

THE DISCLOSURE

The Office Action objects to the disclosure asserting that the disclosure contains a number of informalities. In response, Applicants amend the disclosure to address the Office's concerns.

Reconsideration and withdrawal of the objection to the specification are respectfully requested.

IV. THE REJECTION UNDER 35 U.S.C. § 101

The Office Action rejects claims 1, 2, 4 and 6-9 under 35 U.S.C. § 101, asserting that the claims as written include naturally occurring material. In response, Applicants amend the claims to address the Office's concerns. Reconsideration and withdrawal of the rejection of claims 1, 2, 4 and 6-9 under 35 U.S.C. § 101 are respectfully requested.

V. THE REJECTION UNDER 35 U.S.C. § 112

The Office Action rejects claims 1, 2, 4 and 6-9 under 35 U.S.C. § 112, asserting that the claims as written include naturally occurring material. In response, Applicants amend the claims to address the Office's concerns. Reconsideration and withdrawal of the first aspect of the rejection of claims 1, 2, 4 and 6-9 under 35 U.S.C. § 112 are respectfully requested.

The Office Action rejects claims 1, 2, 4 and 6-9 under 35 U.S.C. § 112, asserting that the claims fail to comply with the written description requirement. In particular, the Office Action asserts that the written description does not provide support for 70% homology to SEQ ID NO:1 or to fragments or derivatives of SEQ ID NO:1.

In response, Applicants amend the claims herein to recite sequences that have at least 90% homology. Support can be found in the disclosure at, e.g., page 4, lines 4-23. Applicants respectfully submit that Applicants are entitled to claim variants of the claimed sequence that are expected to encode a protein having the recited activity. See, e.g., *Ex parte Bandman*, 2004 WL 1646424 (BPAI 2005); and *Enzo Biochem, Inc. v. Gen-Probe Inc*, 296 F.3d 1316 (Fed. Cir. 2002). Reconsideration and withdrawal of the second aspect of the rejection of claims 1, 2, 4 and 6-9 under 35 U.S.C. § 112 are respectfully requested.

VI. THE REJECTION UNDER 35 U.S.C. § 102

The Office Action rejects claims 1, 2, 6-9, 15-17 and 35 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,747,137 (“the ‘137 patent”). In particular, the Office Action asserts that the ‘137 patent discloses sequences that are 81% homologous to SEQ ID NO:1.

In response, claim 1 is amended to remove homology that would otherwise overlap with the ‘137 patent. Reconsideration and withdrawal of the rejection of claims 1, 2, 6-9, 15-17 and 35 under 35 U.S.C. § 102 are respectfully requested.

VII. THE DOUBLE PATENTING REJECTION

The Office Action rejects claims 1-3, 6-9, 15-17 and 35 under the judicially created doctrine of obviousness-type double patenting over co-pending application serial no. 10/451,467 (“the ‘467 application”). In particular, the Office Action asserts that the sequences claimed in the ‘467 application are at least 88.9% homologous to SEQ ID NO:1.

In response, claim 1 is amended to remove homology that would otherwise overlap with the ‘467 application. Reconsideration and withdrawal of the rejection of claims 1-3, 6-9, 15-17 and 35 under the judicially created doctrine of obviousness-type double patenting are respectfully requested.

VIII. CONCLUSION

Early consideration and prompt allowance of the pending claims are respectfully requested. Should the Office require anything further, it is invited to contact Applicants' representative at the telephone number listed below.

Respectfully submitted,

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